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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,144	01/20/2004	Gilbert Garza	112G	6996

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10/31/2005

Frank A. Spear
10264 Champions Court
Ijamsville, MD 21754

EXAMINER

LUGO, CARLOS

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,144

Applicant(s)

GARZA ET AL

Examiner

Carlos Lugo

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 58 is/are allowed.
- 6) ☒ Claim(s) 42, 45 and 49-54 is/are rejected.
- 7) ☒ Claim(s) 43, 44, 46-48 and 55-57 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on August 25, 2005.

Drawings

2. The examiner has approved the drawings filed on August 25, 2005.

Claim Objections

3. **Claim 45 is objected** to because of the following informalities:

- Claim 45 Line 1, change "The assist device of claim 42" to -The assist device of claim 43-.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. **Claim 45 is rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 45 recites the limitation "The assist device of claim 42, wherein said pivot means consists of a long inside threaded bolt which passes through said bracket and said bar, and a short outside threaded bolt which is screwed into said long bolt".

However, claim 42 does not recite the limitation "bracket" so as to properly give antecedents of basis for the limitation. Instead, claim 43 recites the bracket. Therefore, in order to continue with the examination, claim 45 will be examined as

been depending from claim 43 (see claim objection section above). Appropriate correction and/or explanation are required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 42,49,50 and 53 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 3,025,095 to Christensen.

Regarding claims 42 and 53, Christensen discloses an assist device comprising an elongated bar (16). One end of the bar is constructed and arranged to pivot about a pivot means (at 18) and the other end of the bar is constructed and arranged to receive a piece (19) therein.

The piece is attached to a handle (22), projects outwardly from the handle, in use is immovable relative to the handle, and is not as wide as the handle.

The engagement of the piece and the handle creates stop surfaces (edge of 22) for the bar as the piece is introduced into the bar.

As to claim 49, Christensen illustrates that the bar has a substantially constant cross-sectional area throughout its entire length.

As to claim 50, Christensen illustrates that the assist device parts appear to be very tightly and sturdily arranged; yet the bar pivots as desired.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 51 and 52 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,025,095 to Christensen as applied to claim 25 above, and further in view of US Pat No 2,871,050 to Dickinson and further in view of US Pat No 6,102,451 to Merryman.

Christensen fails to disclose that the bar has a square cross sectional shape that receive a square cross section shape of the piece. Christensen discloses that the main body of the bar has a circular cross sectional shape that receives a similar cross section shape of the piece.

Dickinson teaches that it is known in the art to have a bar with a square cross sectional shape. The bar has a receiving part (at 60) having a square cross sectional shape that receive a piece (end of 20) having a similar shape.

Merryman teaches that it is well known in the art to have a piece (28) having a square cross section shape that is received in a similar cross sectional shape of the bar.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bar and the piece described by Christensen with a

square cross section shape, as taught by Dickinson and Merryman, so as to help in the engagement of the bar and the pivot piece.

10. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,025,095 to Christensen as applied to claim 53 above, and further in view of US Pat No 4,629,228 to Marko et al (Marko).

Christensen fails to disclose that the pivot means consists of a long inside threaded hollow bolt and a short outside threaded bolt, which is screwed into the long bolt. Merryman discloses the use of a screw (18).

Marko teaches that it is well known in the art to have pivot means that consist of a long inside threaded hollow bolt (38) and a short outside threaded bolt (46), which is screwed into the long bolt.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a pivot that consist of a threadedly engaged long and short bolts, as taught by Marko, into a device as described by Christensen, in order to have a stronger materially embodiment and to have a embodiment that has no sharp projecting parts that could harm a person.

Allowable Subject Matter

11. Claim 58 is allowed.

12. Claims 43,46 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 44,47,48,56, and 57 would also be allowed because the claims depend from claims 43,46 and 55

respectively. Claim 45 would also be considered allowed according to the interpretation given before, which depends from claim 43.

Reasons For Allowance

13. The following is an examiner's statement of reasons for allowance:

Claim 58 is allowable over the prior art of record and claims 43,46, and 55 presents allowable subject matter over the prior art of record because the teachings of the references taken as a whole do not teach or render obvious the combination set forth, including that the pivot means secures the bar to a u-shaped bracket (Claims 43,55 and 58), and that the piece is secured to the handle by means of bolts and nuts (claims 46 and 58).

Christensen fails to disclose that the pivot means (at 18) secures the bar (16) to a U-shape bracket. Christensen discloses that the pivot means (18) secures the bar (16) to a piece of rubber (17).

Also, Christensen fails to disclose that the piece is secured to the handle by means of bolts and nuts.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

14. Applicant's arguments filed on August 25, 2005 have been fully considered but they are not persuasive.

Regarding applicant's arguments with respect to the rejection of the claims in view of Merryman (Page 2 Line 14), the current amendment overcomes the rejection; therefore, the rejection has been withdrawn.

As to applicant's arguments that Christensen fails to disclose a pivot means (Page 3 Line 4), the argument is not persuasive. Christensen clearly illustrates that the bar (16) pivots with respect to the screw (18). Has seen in Figures 1 and 2, when the device is operated, the bar pivots from the rest position (bold line) to the operated position (cut lines). In those figures, it can be seen that the bar moves from one position to the other position with respect to the screw (18). Therefore, the rejection is maintained.

Further, the applicant argues that element 22 presented in Christensen can not be considered as a handle. The applicant is reminded that first, the claim language does not define the handle structure, and second, that a handle is a part that is designed especially to be grasped by a hand. At the instant, element 22 is capable of being grasped by a hand in order to operate the latch. Accordingly, element 22 presented by Christensen can be considered as a handle. This handle receives the piece (19) so as to fit it inside of it (Col 1 Lines 40-45).

Conclusion

15. Applicant's amendment, that the piece is immovable relative to the handle, necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

C.L.

Carlos Lugo
AU 3676

October 26, 2005.


BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER